

BEFORE THE
Federal Communications Commission
WASHINGTON, D. C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Implementation of the)
Cable Television Consumer)
Protection and Competition)
Act of 1992)

Consumer Protection and)
Customer Service)

MM Docket No. 92-263

COMMENTS OF TELE-COMMUNICATIONS, INC.

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Summary

In 1990, the National Cable Television Association adopted comprehensive customer service standards ("NCTA Standards"). The vast majority of cable operators have implemented the NCTA Standards at considerable expense and with impressive results.

In the absence of compelling, quantifiable evidence that the NCTA Standards are not producing satisfactory results, the Commission should not impose increased costs upon cable operators and consumers by varying from the Standards. However, TCI believes that certain definitional clarifications, described herein, will enhance the ability of cable operators to implement and franchise authorities to measure the Standards.

The Commission's standards are not self-executing; thus, a franchise authority must affirmatively adopt them. TCI does not object to franchise authority adoption of the Standards at any time.

The only way to ensure that each Subsection of Section 632 has effect is to permit franchise authorities to impose standards stricter than the Commission's in only two circumstances: 1) where the cable operator and the franchise authority agree to stricter standards; and 2) where a state or municipal law of general applicability imposes stricter standards.

The Commission can and should establish enforcement principles to which franchising authorities must adhere,

including: 1) measurement based on aggregate performance; 2) reasonable penalties; 3) due process; and 4) opportunity to cure.

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COMMENTS OF TELE-COMMUNICATIONS, INC.

Tele-Communications, Inc. ("TCI") hereby files its comments in the above-captioned proceeding.¹ TCI, through its operating subsidiaries, is a multiple systems operator providing cable service in 49 different states to approximately nine million subscribers. TCI is thus an interested party to this proceeding.

I. INTRODUCTION

Section 8 of the Cable Television Consumer Protection and Competition Act of 1992 (the "Act")² requires the Commission to establish standards by which cable operators may fulfill customer

¹ Notice of Proposed Rulemaking in MM Docket No. 92-263, FCC 92-541 (rel. December 11, 1992) ("Notice").

² Pub. L. No. 102-385, 106 Stat. 1460 (1992) (For ease of reference, citations herein are made to the Communications Act of 1934, as amended by the Act).

service requirements.³ The Commission should implement this provision in a way that would ensure adequate levels of customer service while minimizing "unnecessary regulation that would impose an undue economic burden on cable systems."⁴ TCI believes that these goals can best be served by the Commission's adoption of the National Cable Television Association's "Recommended Cable Industry Customer Service Standards"⁵ ("NCTA Standards" or "Standards") with certain definitional clarifications. In the past two years TCI and many other cable operators have voluntarily implemented the NCTA Standards at considerable expense and with impressive results. Adoption by the Commission of a different set of standards could subject TCI, other cable operators and ultimately consumers to substantially increased costs while producing marginal, if any, additional benefits to consumers.

³ Communications Act of 1934, Section 632(b).

⁴ Communications Act of 1934, Section 601(6).

⁵ National Cable Television Association, "Recommended Cable Industry Customer Service Standards" (February 14, 1990).

II. THE COMMISSION SHOULD ADOPT THE NCTA STANDARDS AS ITS
CUSTOMER SERVICE STANDARDS WITH ONLY DEFINITIONAL
CLARIFICATIONS

Recognizing that explosive growth in the number and penetration of cable systems had produced customer service difficulties,⁶ the National Cable Television Association ("NCTA") and the Community Antenna Television Association ("CATA") adopted the NCTA Standards in February 1990. The NCTA Standards represent an extraordinary industry-wide response to customer service issues identified in FCC proceedings and

⁶ See, e.g., Cable TV Consumer Protection Act of 1989: Hearings on S. 1880 Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, 101st Cong., 2d Sess. 54-56 (1990) (statement of James Mooney, Pres. and CEO, NCTA); Cable Television Regulation (Part 1): Hearings Before the Subcomm. on Telecommunications and Finance of the House of Representatives Comm. on Energy and Commerce, 101st Cong., 2d Sess., 73-74 (1990) ("Cable TV Reg. 1990 House Hearing") (statement of James Mooney, Pres. and CEO, NCTA); Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, 5 F.C.C. Rcd. 4962, 4991 (1990) ("1990 Cable Report"). Members of Congress also recognized that customer service problems were caused by explosive growth. See, e.g., 138 Cong. Rec. S714 (daily ed. January 31, 1992) (statement of Sen. Tim Wirth); 138 Cong. Rec. S735 (daily ed. January 31, 1992) (statement of Sen. Richard Shelby).

Congressional testimony.⁷ Indeed, the Standards have been praised both by Members of Congress and local cable regulators.⁸

The customer service problems which led the industry to adopt the NCTA Standards also furnished the Congressional impetus for the promulgation of Federal customer service standards. The legislative history of the Act does not reflect dissatisfaction with the NCTA Standards, but instead with customer service performance prior to the industry-wide implementation of the Standards.

Some will no doubt argue that the Commission should adopt customer service standards more stringent than the NCTA's. They

⁷ See, e.g., 1990 Cable Report at 4968, 4974, 4989-4992, 5059-5060; Oversight of Cable TV: Hearings on the Oversight of the 1984 Cable Telecommunications Act Before the Subcomm. on Communications of the Senate Comm. on Commerce, Science and Transportation, 101st Cong., 1st Sess. (1989) (statement of Mr. Saul Ramirez, mayor pro tem and City Councilman, City of Laredo, Texas at 280-281); Cable TV Reg. 1990 House Hearing supra note 6 (statement of Sen. Rick Boucher at 6; joint statement of John L. Hanks, Director of the Bureau of Franchises for New York City, the National League of Cities and the U.S. Conf. of Mayors at 199-200; statement of Mr. Charles A. Devaney, Mayor, City of Augusta, Georgia, on behalf of the National League of Cities, and the U.S. Conf. of Mayors at 416-417).

⁸ See e.g., Cable TV Reg. 1990 House Hearing, supra note 6 (statements of Rep. Matthew J. Rinaldo at 5; Rep. Don Ritter at 9; Rep. Dan Schaefer at 12); (statements of Saul N. Ramirez, Jr., mayor pro tem, city of Laredo, TX at 158; and joint statements of John L. Hanks, Dir. of Bureau of Franchises for New York City, the National League of Cities, and the U.S. Conf. of Mayors at 217-219); H.R. Rep. No. 628, 102nd Cong., 2d Sess. 105 (1992) ("House Report"); 138 Cong. Rec. S658 (daily ed. January 30, 1992) (statement of Sen. Tim Wirth); 138 Cong. Rec. S734 (daily ed. January 31, 1992) (statement of Sen. Richard Shelby). In fact, the only significant reservation expressed concerning the NCTA Standards is that they are voluntary, an issue which would be rendered moot by the Commission's adoption of the NCTA Standards.

may argue that calls should be answered in three rings rather than four and that standard installations be performed in five business days rather than seven. TCI respectfully submits that there is no normative method which the Commission can utilize to choose among such alternative standards. In the absence of compelling, quantifiable evidence that the NCTA Standards are not producing satisfactory results, the Commission should decline any invitation to impose increased costs upon cable operators and consumers by varying from the NCTA Standards.⁹

A. Summary of NCTA Standards

The NCTA Standards address the three broad customer service issues enumerated in Section 632(b) of the Act -- (1) office hours and telephone availability; (2) installations, outages and service calls; and (3) communications, bills and refunds.

1. Office and Telephone Availability.

a. Telephone Hours. The NCTA Standards require that knowledgeable, qualified representatives be available to respond to telephone inquiries during normal business hours on weekdays. In addition, based on community needs, cable systems are to staff telephones for supplemental hours on weekdays and/or weekends.

⁹ TCI believes that whatever standards the Commission adopts should be imposed on all multichannel video providers whether they utilize cable or alternative means to deliver their product to the home. To do otherwise would be to unfairly discriminate against cable operators.

b. Telephone Answering Time. Under normal operating conditions, a customer is to be connected to a customer service representative within 30 seconds of placing a call. Cable systems utilizing automated answering equipment are to limit the number of routine rings to four. Cable systems not utilizing automated equipment are to make every effort to limit routine rings to four. Finally, under normal operating conditions a customer is to receive a busy signal less than three percent of the total time that the cable office is open for business.

c. Office Hours. Customer service centers and bill payment locations are to be open during normal business hours on weekdays. Additional weekday and weekend hours are to be scheduled based on community needs.

2. Installations, Outages and Service Calls.

a. Installations. Standard installations are to be performed within seven business days after an order is placed. The NCTA Standards define a standard installation as one which is within 125 feet from the existing distribution system.

b. Appointment Windows. The NCTA Standards prescribe morning, afternoon and all day during normal business hours as the appointment window alternatives for installations, service calls and other installation activities. Based on community needs, cable systems are to schedule supplemental hours during which appointments can be set. If a service technician or installer is running late, an attempt must be made to contact the

customer and reschedule the appointment as necessary at a time which is convenient for the customer.

c. Outages. Except for situations beyond the cable operator's control, the cable operator is to respond to service interruptions promptly and in no event later than 24 hours.

d. Service Calls. Service problems (other than outages) must be responded to within 36 hours during the normal work week. The appointment window standards set forth above apply to service calls.

3. Communications, Bills and Refunds

a. Written Communications. At the time of installation and at any future time upon request, a cable company must provide written information on (a) products and services offered; (b) prices and service options; (c) installation and service policies; and (d) how to use the cable service.

b. Bills. Bills must be clear, concise and understandable.

c. Refunds. Following the resolution of a refund request, refunds are to be issued promptly, but no later than the earlier of (i) 45 days or (ii) the customer's next billing cycle. If service is terminated, the refund does not have to be paid until company-supplied equipment is returned.

d. Rate or Channel Change. A minimum of 30 days notice is to be given for any rate or channel change. The

foregoing notice need only be given if the change is within the control of the cable operator.

B. TCI Has Adopted the NCTA Standards at Substantial Cost and With Favorable Results

Promptly after their issuance by the NCTA, TCI added compliance with the NCTA Standards as a feature of its previously adopted customer service program, "The Customer 1st."¹⁰ By December 31, 1992, all of TCI's cable systems had adopted the NCTA Standards and 95% had been certified as meeting the Standards. This rapid implementation of the NCTA Standards and its earlier adoption of the "The Customer 1st" program, reflect TCI's commitment to excellent customer service and the approach adopted by the NCTA. It also demonstrates, notwithstanding the protestations of the industry's critics, that minimization of churn and maximization of market penetration provide ample economic incentives to adopt comprehensive customer service initiatives.

Implementation of "The Customer 1st" and the NCTA Standards required substantial expenditures by TCI for additional hardware

¹⁰ Like many other cable operators, TCI had a customer service program that preceded the NCTA Standards. TCI's "The Customer 1st" program to a large extent focuses on TCI's internal operations and organization. Given the great variety in the operational and organizational structure of various cable systems and MSOs, TCI does not believe that the features of individual cable operator customer service programs should be adopted by the Commission as customer service standards under Section 632(b) of the Act.

and hardware upgrades, including the installation or enhancement of new phone systems in 70% of TCI's cable systems by the beginning of 1991.¹¹ In addition, TCI increased the number of customer service representatives and other personnel in connection with implementing the NCTA Standards.

C. The Commission Has Authority Under the Act to Adopt the NCTA Standards as its Customer Service Standards

Both the language of the Act and its legislative history invite the Commission to adopt the NCTA Standards as its own under Section 632(b). Indeed, the fact that Sections 632(b)(1)-(3) of the Act enumerate substantially identical categories as those in the NCTA Standards provides compelling evidence that Congress viewed the NCTA Standards as the appropriate structure on which the Commission should base its standards.¹² The House Report on the Act characterizes the NCTA Standards as "[a] welcome initiative, which the Commission may use [as] a benchmark in establishing customer service standards."¹³

¹¹ TCI Tackles Customer Service Problems, Broadcasting, September 25, 1989, at 36.

¹² TCI shares the Commission's view, as expressed in the Notice, that the Federal customer service standards should be confined to the matters enumerated in Sections 632(b)(1)-(3) of the Act. See Notice at note 13.

¹³ House Report at 105. Numerous Members of Congress have spoken favorably of the NCTA Standards in the course of Congressional hearings on the Act and predecessor proposals. See supra note 8.

D. The Commission Should Make Certain Definitional Clarifications to the NCTA Standards

Based on its experience in implementing the NCTA Standards, TCI believes that adopting the following definitions for terms used in the Standards will ensure flexibility, recognize the special concerns of smaller cable systems, and furnish subscribers, the Commission and the local franchising authorities with comprehensible and readily enforceable customer service standards. Moreover, adopting these definitions allows the Commission to achieve these goals while retaining the structure of the NCTA Standards, which has been widely and successfully implemented by the industry:

Normal Business Hours

"Normal Business Hours" should be defined to mean an aggregate of 40 hours during each normal weekday period. For purposes of these definitional clarifications, a "normal weekday period" is each Monday through Friday during which "Normal Operating Conditions" (as defined herein) exist for the entire period.

In some communities it might be desirable to open for business earlier than in others; and in some communities it might be preferable to vary opening and closing times from day to day. The above definition gives a cable operator the flexibility to

tailor operating hours to suit such community habits and preferences, while at the same time ensuring that Normal Business Hours constitutes an adequate level of service. Also, by incorporating the concept of "Normal Operating Conditions," the definition takes holidays, natural disasters and other abnormal operating conditions into account by providing that the 40-hour test does not have to be met under such circumstances.

Supplemental Hours

"Supplemental Hours" should be defined to mean: (i) up to an additional 15 hours during each normal weekday period; and (ii) four hours on each Saturday during which Normal Operating Conditions exist for the entire Saturday.

The NCTA Standards provide "Supplemental Hours" for office and telephone availability and appointments for installations and service calls based on "Community Needs." Rather than establishing strict time frames, the definition should permit operators to match their Supplemental Hours with the time of peak consumer demand for services.

Normal Operating Conditions

"Normal Operating Conditions" should be defined to mean those conditions which are within the reasonable control of the cable operator. Those conditions which, for purposes of the definition of Normal Operating Conditions, are not within the control of the cable operator include, but are not limited to: federal, state and local holidays, acts of God, fire or other

casualty, civil disturbances or emergencies, strikes or other labor difficulties, lack of labor or materials, war, and governmental restrictions. In addition, "Normal Operating Conditions" does not include conditions occurring as a result of a significant enhancement or upgrade of the cable system.

The NCTA Standards recognize that while cable operators should endeavor to provide the highest possible level of customer service at all times, exigent circumstances occasionally make it temporarily impracticable to maintain the service levels mandated by the Standards. Thus the Standards provide that the telephone answering, installation, service response, appointment window and appointment rescheduling standards apply only under "Normal Operating Conditions." The above definition sets forth a non-exhaustive list of events and circumstances that fall outside of Normal Operating Conditions which will provide greater clarity to both operators in implementing and franchising authorities in measuring the Standards.

Conditions occurring as a result of significant upgrades and enhancements of a cable system are also excepted from Normal Operating Conditions. It is sometimes necessary for cable operators to "rebuild" a cable system to modernize its distribution plant. Such rebuilds, when justified by demand and appropriately balanced against cost, generally result in increased channel capacity and technical quality and are clearly in the consumers' interest. Yet, the rebuilds can be expected to cause transient customer service problems. Measuring customer

service performance during the installation of system upgrades would thus mask the true level of customer service performance.

Service Interruption and Other Service Problems

"Service Interruption" should be defined to mean an interruption of cable service then subscribed to resulting in the loss of a picture on more than one channel and which is the responsibility of the cable operator to rectify.

"Other Service Problem" should be defined to mean any problem (other than a "Service Interruption") with the picture or sound quality of the cable service then subscribed to which problem is the responsibility of the cable operator to rectify.

The NCTA Standards mandate a 24-hour response time to "Service Interruptions" and a 36-hour response time for all "Other Service Problems." The above definitions are intended to distinguish between the two and make it clear that the cable operator must respond during the mandated time frames only to those problems which it is responsible for rectifying.

Community Needs

"Community Needs" should be defined to require a quantifiable demonstration by the franchising authority that (i) based on current subscriber utilization rate of the cable operator's customer service phone lines and personnel, there is sufficient demand to make Supplemental Hours necessary for customer telephone inquiries, customer service center walk-in

visits, and/or appointment windows for installations and service calls; and (ii) the reasonable projected usage of such Supplemental Hours by subscribers is sufficiently high to justify the imposition on the system's subscribers of the increased costs and expenses incurred by the cable operator of providing such Supplemental Hours. Any such franchise authority quantifiable determination that Supplemental Hours are necessary shall: (A) be made only after the franchising authority has provided the cable operator reasonable notice and opportunity to comment; and (B) take effect not earlier than 90 days after prior written notice is given to the cable operator, unless such effective date is impracticable for reasons beyond the cable operator's control.

The above definition gives the franchising authority the right to require the cable operator to provide Supplemental Hours, but only after the authority makes a reasonable determination that there is an actual need for them, taking into account the cost. The definition also gives the cable operator a reasonable period of time to implement the Supplemental Hours.

III. A FRANCHISING AUTHORITY MAY EXCEED THE COMMISSION CUSTOMER SERVICE STANDARDS ONLY IN CERTAIN LIMITED CIRCUMSTANCES

The customer service standards to be promulgated by the Commission pursuant to Section 632(b) are the centerpiece of the Act's customer service provisions. In fact, the Act states that compliance with the Commission standards constitutes one method

"[b]y which cable operators may fulfill their customer service requirements."¹⁴ Thus, except in the limited circumstances described below, cable operators may fully satisfy their customer service obligations by meeting the Commission's standards.

Section 632 of the Act gives the local franchising authority the right to insist on adherence to customer service standards stricter than those promulgated by the Commission in only two circumstances: 1) where the franchise authority and the cable operator agree to stricter standards pursuant to Section 632(c)(2); and 2) where a state or municipality imposes customer service laws and regulations of general applicability which are more stringent than the industry-specific standards promulgated by the Commission.¹⁵

The above interpretation of the interrelationship of the various subsections of Section 632 is the only one which gives meaning to all of the subsections¹⁶ and is consistent with the

¹⁴ Communications Act of 1934, Section 632(b).

¹⁵ Communications Act of 1934, Section 632(c)(2). TCI does not share the view expressed in the Notice at ¶5 that state or local customer service laws or regulations of general applicability adopted pursuant to Section 632(c) are superseded by stricter Federal customer service standards adopted pursuant to Section 632(b). TCI believes that the Section 632(b) Federal standards create maximum requirements for the cable operator and should not be read to prevent a locality from adopting less stringent customer service regulations of general applicability under the Section 632(c).

¹⁶ In construing Section 632 the Commission is obligated to interpret it in a way that gives effect to each subsection. Statutes are not to be interpreted such that certain parts make no sense or lack effect, especially if another construction would make each part effective. See Bowsher v. Merck & Co., Inc., 460 (continued...)

purposes of the Act. First and foremost, the provisions of Section 632(b) prevent cable operators from being subjected to a patchwork of local customer service standards. The compliance economies afforded by uniform Commission standards far outweigh the benefits of allowing each individual franchising authority to impose its own requirements on such customer service matters as telephone answer time and frequency of busy signals.

Second, an interpretation of Section 632(b) as providing for Federal standards that the franchising authority is free to ignore, is at odds with the Section's text. Such an interpretation reads the first sentence of Section 632(c)(2) out of the Act entirely. For if the franchising authority were free to impose customer service requirements that exceed the Federal standards, then there is no reason for Section 632(c)(2) to provide that the franchising authority and the cable operator may agree to such tougher customer service requirements.

IV. TCI DOES NOT OBJECT TO THE COMMISSION'S PROPOSAL THAT A FRANCHISING AUTHORITY MAY ADOPT THE COMMISSION'S CUSTOMER SERVICE STANDARDS AT ANY TIME

The legislative history of the Act is unambiguous about the point in time at which a franchise authority can establish and

¹⁶(...continued)
U.S. 824, 833 (1983); see generally Norman J. Singer, Sutherland Statutory Construction Section 46.06 (5th ed. 1992).

enforce customer service requirements under Section 632(a).¹⁷

The Conference Report states:

Section 632(a) allows franchising authorities to establish and enforce, as part of a franchise, or franchise renewal, modification or transfer, customer service requirements, construction schedules and other construction-related requirements.¹⁸

The House Report, summarizing the identical provision, similarly stated:

Subsection 632(a) allows franchising authorities to establish and enforce, as part of a franchise, including a modification, renewal, or transfer thereof, provisions for enforcement of customer service requirements, construction schedules and other construction-related requirements including construction-related performance requirements of the cable operator.¹⁹

Notwithstanding this legislative history, TCI does not object to franchising authorities being granted the right to adopt the Commission's standards at any time if the Commission's standards track the NCTA Standards. The Commission should require that a franchising authority adopting the Commission's standards give the cable operator notice and a reasonable period of time to implement them. TCI believes the prescribed amount of

¹⁷ Because a cable operator can fulfill its customer service requirements by complying with the Commission's standards, a local franchising authority is not permitted, pursuant to Section 632(a)(1), to promulgate more stringent local standards.

¹⁸ H.R. Conf. Rep. No. 862, 102nd Cong., 2d Sess. 78 ("Conference Report") (emphasis supplied).

¹⁹ House Report at 105 (emphasis supplied).

time should be no less than six months if the Commission adopts the NCTA Standards without substantial modification.²⁰

The Notice solicits comments on the question of whether the Commission's standards are self-executing.²¹ TCI does not find any support in the Act or its legislative history for that notion. Instead, both the Conference and House Reports provide that the Federal standards promulgated by the Commission "[m]ay be required in local cable franchises and enforced by local franchising authorities."²²

V. THE COMMISSION SHOULD REQUIRE FRANCHISING AUTHORITIES TO ADHERE TO CERTAIN PRINCIPLES WHEN ENFORCING CUSTOMER SERVICE STANDARDS

Section 632 does not confer on the Commission any authority to enforce customer service standards. This is not surprising because the standards are not self-executing; but must be adopted by franchise authorities.²³

Franchising authorities may, of course, consider customer service standards at the time of a franchise renewal.²⁴ In

²⁰ If the Commission varies from the NCTA Standards the amount of time given to the cable systems to implement the standards should be significantly longer.

²¹ See Notice at ¶4.

²² Conference Report at 78. House Report at 105.

²³ See supra text at Section IV.

²⁴ Communications Act of 1934, Section 626.

addition, TCI believes a franchising authority has the right to enforce the Commission's standards once the franchising authority has adopted them.

However, because franchise enforcement mechanisms vary greatly, the Commission should establish principles that franchising authorities must adhere to in enforcing the Standards. This would protect cable operators against capricious enforcement of the Commission's standards, yet still give franchising authorities flexibility to utilize customized enforcement mechanisms.

The sheer number of subscribers and subscriber transactions coupled with the sophistication of cable technology make it impossible to eliminate every potential instance of customer service dissatisfaction. It is the goal of both the industry and Section 632 of the Act to minimize the frequency of customer service complaints, notwithstanding the fact that the number never will be reduced to zero. Recognition of this goal should guide the Commission in enunciating its enforcement principles. The Standards should be enforced with an eye to ensuring an appropriate system-wide level of customer service; not providing case-by-case determinations and remedies for aggrieved subscribers.

TCI believes that enforcement of customer service standards by franchising authorities should be bounded by the following four principles: aggregate performance, reasonable penalties, due process, and opportunity to cure.

A. Aggregate Performance

Measurement of a cable operator's customer service performance should be on an aggregate basis over an appropriate period of time.²⁵ Local franchising authorities should not be allowed to promulgate enforcement criteria which convert the Commission's standards into a mechanism for case-by-case customer grievance resolution administered by government officials. Instead, the Commission should allow franchising authorities to trigger enforcement actions only when the benchmark performance percentages set forth in the NCTA Standards are not met.²⁶ Since the NCTA Standards are quantitative in nature, customer service performance can be most easily evaluated by systematically measuring a cable company's compliance with the Standards.

B. Reasonable Penalties

Enforcement criteria that are premised on regular, systematic evaluation of a cable company's customer service

²⁵ TCI believes the appropriate period of time to be one year.

²⁶ The NCTA Standards provide the following performance benchmarks: 1) the telephone answer time and ring standards are to be met no less than ninety percent of the time measured on an annual basis; and 2) the standards relating to installations, outages and service calls are to be met under normal operating conditions no less than 95% of the time measured on an annual basis.

performance is likely to go a long way in preventing franchising authorities from attempting to exact unreasonably large penalties for customer service violations.²⁷ However, without a Commission proscription there remains the possibility that franchising authorities will misguidedly try to compel flawless customer service performance by enacting truly chilling penalties for failure to maintain mandated levels of customer service performance. Such penalties, particularly when imposed on a per incident, per day basis, place an undue economic burden on cable systems over incidents that do not warrant such a drastic result. The Commission should prohibit such confiscatory penalties and instead simply prescribe maximum penalties at a level which unarguably promotes compliance. The amount of the penalty should be reasonably tailored to the extent of the violation.²⁸ Moreover, the franchising authority should be prohibited from imposing a penalty which is greater in amount than that provided for in any customer service statute or regulation of general applicability.

²⁷ TCI does not believe that the Act gives franchising authorities the right to impose monetary penalties that are not written into the franchise.

²⁸ The Commission should distinguish between "incidents" and "violations" when crafting maximum penalties. For the reasons set forth in the text, penalties should not be imposed for individual incidents of customer service failure. Rather, penalties should be imposed only for a failure to meet the threshold customer service levels set out in the Commission's standards.